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Ontario Labour Relations Board HIGHLIGHTS

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NOTICES TO THE COMMUNITY

Job Postings

The Board has posted two vacancies on the OPS careers website at: www.gojobs.gov.on.ca : Labour Relations Specialist (Construction) (Job Id: 59517) and Labour Relations Officer (Job Id: 59518). Both competitions close on February 21.

From the Library

Bargaining Unit Certificates (BUC) issued in 2013 and 2012 have been indexed by the Ontario Workplace Tribunals Library. The BUC Index is now available on-line through the Library website. 2013 Certificates http://bit.ly/1awGktT and 2012 Certificates http://bit.ly/1cBFTem. Full access to the Certificates from 2007 to present may be accessed via the OLRB Certificates Database at http://catalogue.owtlibrary.on.ca/olrb/

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in January of this year. These decisions will appear in the January/February issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute www.canlii.org.

Certification – Construction Industry – The Board addressed two issues that arose out of errors in the Employer's response to an application for certification – The Union, applying on a Saturday, believed there were two persons at work at one site – In its timely response, the Employer identified fourteen people at work at five sites – The Employer listed one site as "50 Eglinton Avenue West" in Toronto – In its subsequent investigation, the union ascertained there was no such address and no purported employees anywhere in the vicinity of where that address might have been – The Employer later submitted it had made an innocent error writing "West" when it actually meant "East" – The Board accepted the Union's assertion that it was prejudiced by the error, and would not allow the Employer to rely on the site at issue – On the second matter, the Board denied the Employer's attempt to add a name to its employee list two days after the Employer had filed its response – The Employer offered no explanation for its alleged inadvertence and even failed to identify the location where the extra person was to have been working – Matter continues

A.P.S. INTERIORS INC.; RE: The International Union of Painters and Allied Trades, Local Union 1891; OLRB File No. 2433-13-R; Dated January 31, 2014; Panel: David A. McKee (12 pages)

Duty of Fair Representation – Grievance – The applicant alleged the union acted arbitrarily when it withdrew his termination grievance against the employer – The union preferred the employer's version of events over the applicant's and his union steward's regarding what led to the termination – The Board concluded that the Union acted arbitrarily and breached s. 74 of the Act for a number of reasons – First, the Board noted that the union "must have some reasonable basis for its assessment and its decision" – In this case, the union offered no reasonable basis for preferring

the employer's version of events nor did the Union identify any credibility issues with the applicant – The Board also noted that the Union similarly offered "no reasonable basis" for concluding that the job steward was "unreliable or untrustworthy" – The Board stated that the union should have put the competing version of events to the applicant and provided him with an opportunity to refute it – Finally, the Board noted that a union member is entitled to a complete and accurate explanation when a union decides not to pursue his grievance – There was a "complete absence of rigour or scrutiny in the union's handling of the applicant's grievance" and in all the circumstances, the union's conduct was arbitrary – Application allowed

DOUGLAS MURDOCH.; RE: International Association of Heat and Frost Insulators, Local 95; RE: Dew Point Insulation Systems Inc.; OLRB File No. 3495-12-U; Dated January 28, 2014; Panel: Lyle Kanee (7 pages)

Health and Safety – Reprisal – The applicant lodged a series of complaints with his employer, the Carpenters' union, regarding allegedly abusive and harassing conduct by his superior – The Board, recognizing that one reasonable reading of the OHSA (in *A.I.M. Group*) accepted that the making of a complaint under an employer's harassment policy could constitute seeking the enforcement of the Act, here found that the applicant's complaints were all concerned with his boss's management style, did not make out a complaint about harassment and were not the reason for his dismissal – The Board was satisfied that the applicant's employment would have been terminated in any event: in the politics and economics of that workplace, it was not acceptable for the applicant to undermine his superior in the manner he did – Application dismissed

GARY MURPHY; RE: The Carpenters' District Council of Ontario; OLRB File No. 0081-11-OH; Dated January 23, 2014; Panel: Brian McLean (18 pages)

Delay - Construction Industry Grievance – Hydro One argued that it was prejudiced by the filing of this grievance ten months after the grievor lodged her initial harassment complaint about the conduct of her co-workers – The Board considered the factors relevant to the exercise of its discretion to allow the late filing: (1) the reason for the delay; (2) the length of the delay; and (3) the nature of the grievance – The Board relied on the definition of harassment in the *Human Rights Code* which describes "a *course* of vexatious comment or conduct" – It was proper therefore to consider a continuous progression over a period of some duration rather than an isolated or culminating incident – The Board found that Hydro One suffered no prejudice since it was alerted to the conduct complained of when the harassment complaint was lodged; moreover Hydro One ordered an investigation, participated in it, and meted out consequences based on the results of the investigation – Motion for dismissal for delay denied – Hydro One ordered to file detailed response – Matter continues

HYDRO ONE INC.; RE: Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 183; OLRB File No. 0106-13-G; Dated January 28, 2014; Panel: Patrick Kelly; Roy O'Rourke and A. Haward (13 pages)

Employment Standards – In the context of this review of a Notice of Contravention issued against an employer, the Director of Employment Standards argued that the failure to pay vacation pay in a timely way violated both sections 11 (the obligation to pay wages not later than seven days after the end of employment) and 38 (the obligation to pay vacation pay in accordance with section 11) – The Board held that finding a violation of both sections would give rise to double jeopardy for the same wrongful action – The Board also found that an employer is obliged to pay wages to an employee even if the employee refuses to give the employer his or her social insurance number – Penalty reduced

NARGES SHIRAZ FOOD IMPORTERS INC.; RE: Director of Employment Standards; OLRB File No. 1788-13-ES; Panel: Ian Anderson (5 pages)

Jurisdictional Dispute - The Carpenters' Local 27 argued that the assignment of the carpentry portion of concrete forming construction in connection with landscaping in the ICI sector to members of Local 183 under the LIUNA ICI agreement was illegal because the employees doing the work were in fact carpenters - Local 27 contended that as that work assignment was contrary to the Act, it should be changed and that Local 27 carpenters should have been assigned work – The Board held that Local 27 was equating representation rights with work jurisdiction – The

employees performing the work were construction labourers engaged to do work that is also done by carpenters – The Board found that the Labourers ICI agreement can properly apply to persons who are construction labourers engaged in carpentry work – Work assignment affirmed

PCL CONSTRUCTORS CANADA; RE: Universal Workers' Union, Labourers' International Union of North America, Local 183; RE: The Downsview Group, and Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, on behalf of its constituent Union, Local 27; OLRB File No. 0877-12-JD; Panel: Harry Freedman (17 pages)

Certification – Construction Industry – The preliminary issue before the Board was whether the exemption contained in subsection 3(c) of the Act applied to S and W – Subsection 3(c) states that "the Act does not apply to a person … who is employed in horticulture by an employer whose primary business is agriculture or horticulture" – Quinlan argued that the exemption applied to S and W – The Board recognized that a two part inquiry was required to determine whether the subsection applied: (1) whether S and W were employed in horticulture by Quinlan; and (2) whether the primary business of Quinlan is horticulture – In addressing the first question, the Board reviewed the nature of the duties performed by S and W over the course of one year and considered whether S and W devoted a "significant amount of time" performing tasks associated with horticulture – After reviewing the evidence, the Board concluded that neither S nor W were exempt by reason of subsection 3(c) – Given that S and W were not employed in horticulture, it was not necessary to determine whether Quinlan's primary business is horticulture – Matter proceeds

QUINLAN INC.; RE: Labourers' International Union of North America, Local 625; OLRB File No. 1489-13-R; Dated January 9, 2014; Panel: Lee Shouldice (10 pages)

Bargaining Rights – Collective Agreement - Did the Union's bargaining rights continue to exist at a newly opened location in the Eaton Centre following the closure of the first Richtree Restaurant located elsewhere in the mall? – The original bargaining rights applied to the Eaton Centre generally – In 2006, the Union and Richtree negotiated a collective agreement which applied to the Eaton Centre "220 Yonge Street" – After closing the first Restaurant, Richtree obtained an entrance address of 14 Queen Street West for its new location, though no actual entry point existed at that address – The Union argued that its bargaining rights attached to the Eaton Centre without restriction while Richtree argued that the bargaining rights were restricted to 220 Yonge Street – The parties did not introduce direct evidence of the 2006 negotiations – The Board concluded that 220 Yonge Street was added "as merely a description of the Eaton Centre--not a limiting qualification or restriction" – The Board relied on evidence which suggested that the name "Eaton Centre" and 220 Yonge Street address were used interchangeably – The Board held that a move of some 50 metres across the corridor of the mall and obtaining a new entrance address for the new location were not enough to extinguish the pre-existing bargaining rights" – Matter continues

RICHTREE MARKETS INC.; RE: UNITE HERE Local 75; OLRB File No. 1768-13-U; Dated January 7, 2014; Panel: Bernard Fishbein (13 pages)

COURT PROCEEDINGS

Delay – Duty of Fair Representation – Judicial Review – Settlement – The Board dismissed a duty of fair representation complaint because it had been filed eighteen months after a mediated settlement of a grievance – The Board cited both delay and the fact of the settlement as reasons for not inquiring further into the complaint – On judicial review, the Court held that it was reasonable for the Board to reach this conclusion, particularly so in view of the fact the applicant was attempting to attack a settlement agreement – Application dismissed

CHARLES W. COLHOUN; RE: Hydro One Networks Inc.; RE: Power Workers' Union; OLRB File No. 0260-12-U; (Court File No. 293/13); Dated January 8, 2014; Panel: Lederman, Whalen and Kiteley JJ. (5 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
LIUNA - Rudyard; Zzen Divisional Court No. 485/13	0318-13-R	Pending
Richtree Markets Inc. Divisional Court No. 31/14	1768-13-U	Pending
2218783 Ontario Inc. Divisional Court No. 13-DV-0133 **(Brampton)**	2872-12-ES	Pending
Jefferson Mendonca Divisional Court No. 478/13	2146-10-U 0006-13-R	Pending
DH General Contracting Inc. Divisional Court No. 13-DV-1966 **(Ottawa)**	1820-12-R 3025-12-G	Pending
Neivex et al. Divisional Court No. 416/13	0441-13-R	Pending
Merc Electrical Limited Divisional Court No. 437/13	0452-13-G	Pending
Nadalin Electric Company (Ontario) Inc. Divisional Court No. 498/13 **(Hamilton)**	0615-13-R	Week of February 24
Sysco Fine Meats of Toronto a division of Sysco Canada Inc Divisional Court No. 414/13	3484-11-R	Pending
Godfred Kwaku Hiamey Divisional Court No. 345/13; 346/13	2906-10-U 3568-10-U	Pending
Gate Gourmet Canada Inc. Divisional Court No. 276/13	3688-11-U	Pending
Charles W. Colhoun Divisional Court No. 293/13	0260-12-U	Dismissed; Reasons: January 14, 2014
Signature Contractors Windsor Inc. Divisional Court No. 231/13	3315-12-R 3316-12-R 3317-12-R	Pending
Biggs & Narciso Construction Services Inc. Divisional Court No. 181/13	1307-10-R	Dismissed January 30, 2014 Reasons to Follow
Weihua Shi Divisional Court No. 158/13	0273-10-ES	Dismissed; Seeking Leave to CA
Durval Terciera, et al Divisional Court No. 520/12	1475-11-U	Allowed Leave to CA Granted

Bur-Met Construction Divisional Court No. DC-12-010	3893-11-R	March 11, 2014
Albert Tsoi v. UNITE HERE Divisional Court No. 330/12	3908-09-U	February 19, 2014
IBEW, Local 894 Divisional Court No. 321/12	3174-09-U	March 26, 2014
EllisDon Corporation Divisional Court No. 310/12 M42989	0784-05-G	Allowed; Seeking Leave to CA
SMW v. EllisDon Divisional Court No. 363/12 M42989		Dismissed; Seeking Leave to CA
EllisDon Corporation Divisional Court No. 309/12	2076-10-R	Pending
Hassan Hasna Divisional Court No. 83/12	3311-11-ES	Pending
Rainbow Concrete Industries Limited Divisional Court No. 925/13 M43026	2692-06-ES	Dismissed; Seeking Leave to CA
Landmart Building Corp. Divisional Court No. DC 12-346JR **(Hamilton)**	2519-11-R	Week of February 24, 2014
John McCredie v. OLRB et al Divisional Court No. 1890/11 **(London)**	1155–10–U	Pending
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 213/11	0816–10–U 0817–10–U	Dismissed; Seeking Motion to set aside
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 383/10	0290–08–U 0338–08–U	See above
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 431/08	4045–06–U et al	See above